

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1029**

Introduced by Hunt, 8.

Read first time January 13, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;  
2 to amend sections 48-1102, 48-1104, 48-1107, 48-1107.01, 48-1108.01,  
3 48-1114, and 48-1121, Reissue Revised Statutes of Nebraska; to  
4 define and redefine terms; to prohibit harassment by certain  
5 employers; to provide an unlawful employment practice for a covered  
6 entity; to harmonize provisions; and to repeal the original  
7 sections.  
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-1102, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,  
4 unless the context otherwise requires:

5 (1) Person includes ~~shall include~~ one or more individuals, labor  
6 unions, partnerships, limited liability companies, associations,  
7 corporations, legal representatives, mutual companies, joint-stock  
8 companies, trusts, unincorporated organizations, trustees, trustees in  
9 bankruptcy, or receivers;

10 (2) Employer includes a Class I employer and a Class II employer;

11 (3) Class I employer means shall mean a person engaged in an  
12 industry who has fifteen or more employees for each working day in each  
13 of twenty or more calendar weeks in the current or preceding calendar  
14 year, any agent of such a person, and any party whose business is  
15 financed in whole or in part under the Nebraska Investment Finance  
16 Authority Act regardless of the number of employees and includes shall  
17 ~~include~~ the State of Nebraska, governmental agencies, and political  
18 subdivisions, but such term does shall not include (a) the United States,  
19 a corporation wholly owned by the government of the United States, or an  
20 Indian tribe, ~~or~~ (b) a bona fide private membership club, other than a  
21 labor organization, which is exempt from taxation under section 501(c) of  
22 the Internal Revenue Code, or (c) a Class II employer;

23 (4) Class II employer means a person engaged in an industry who has  
24 one or more employees for each working day in each of twenty or more  
25 calendar weeks in the current or preceding calendar year and any agent of  
26 such a person, but such term does not include (a) the United States, a  
27 corporation wholly owned by the government of the United States, or an  
28 Indian tribe, (b) a bona fide private membership club, other than a labor  
29 organization, which is exempt from taxation under section 501(c) of the  
30 Internal Revenue Code, or (c) a Class I employer;

31 (5) ~~(3)~~ Labor organization means shall mean any organization which

1 exists wholly or in part for one or more of the following purposes:  
2 Collective bargaining; dealing with employers concerning grievances,  
3 terms, or conditions of employment; or mutual aid or protection in  
4 relation to employment;

5 ~~(6) (4)~~ Employment agency means ~~shall mean~~ any person regularly  
6 undertaking with or without compensation to procure employees for an  
7 employer or to procure for employees opportunities to work for an  
8 employer and includes ~~shall include~~ an agent of such a person but does  
9 ~~shall~~ not include an agency of the United States, except that such term  
10 does ~~shall~~ include the United States Employment Service and the system of  
11 state and local employment services receiving federal assistance;

12 ~~(7) (5)~~ Covered entity means a Class I ~~shall mean~~ an employer, an  
13 employment agency, a labor organization, or a joint labor-management  
14 committee;

15 ~~(8) (6)~~ Privileges of employment means ~~shall mean~~ terms and  
16 conditions of any employer-employee relationship, opportunities for  
17 advancement of employees, and plant conveniences;

18 ~~(9) (7)~~ Employee means ~~shall mean~~ an individual employed by an  
19 employer;

20 ~~(10) (8)~~ Commission means ~~shall mean~~ the Equal Opportunity  
21 Commission;

22 ~~(11) (9)~~ Disability means ~~shall mean~~ (a) a physical or mental  
23 impairment that substantially limits one or more of the major life  
24 activities of such individual, (b) a record of such an impairment, or (c)  
25 being regarded as having such an impairment. Disability does ~~shall~~ not  
26 include homosexuality, bisexuality, transvestism, transsexualism,  
27 pedophilia, exhibitionism, voyeurism, gender-identity disorders not  
28 resulting in physical impairments, other sexual behavior disorders,  
29 problem gambling, kleptomania, pyromania, or psychoactive substance use  
30 disorders resulting from current illegal use of drugs;

31 ~~(12)(a) (10)(a)~~ Qualified individual with a disability means ~~shall~~

1 ~~mean~~ an individual with a disability who, with or without reasonable  
2 accommodation, can perform the essential functions of the employment  
3 position that such individual holds or desires. Consideration shall be  
4 given to the employer's judgment as to what functions of a job are  
5 essential, and if an employer has prepared a written description before  
6 advertising or interviewing applicants for the job, this description  
7 shall be considered evidence of the essential functions of the job;

8 (b) Qualified individual with a disability does ~~shall~~ not include  
9 any employee or applicant who is currently engaged in the illegal use of  
10 drugs when the covered entity acts on the basis of such use; and

11 (c) Nothing in this subdivision shall be construed to exclude as a  
12 qualified individual with a disability an individual who:

13 (i) Has successfully completed a supervised drug rehabilitation  
14 program or otherwise been rehabilitated successfully and is no longer  
15 engaging in the illegal use of drugs;

16 (ii) Is participating in a supervised rehabilitation program and is  
17 no longer engaging in such use; or

18 (iii) Is erroneously regarded as engaging in such use but is not  
19 engaging in such use;

20 (13) ~~(11)~~ Reasonable accommodation, with respect to disability,  
21 includes ~~shall include~~ making existing facilities used by employees  
22 readily accessible to and usable by individuals with disabilities, job  
23 restructuring, part-time or modified work schedules, reassignment to a  
24 vacant position, acquisition or modification of equipment or devices,  
25 appropriate adjustment or modification of examinations, training manuals,  
26 or policies, the provision of qualified readers or interpreters, and  
27 other similar accommodations for individuals with disabilities.  
28 Reasonable accommodation, with respect to pregnancy, childbirth, or  
29 related medical conditions, includes ~~shall include~~ acquisition of  
30 equipment for sitting, more frequent or longer breaks, periodic rest,  
31 assistance with manual labor, job restructuring, light-duty assignments,

1 modified work schedules, temporary transfers to less strenuous or  
2 hazardous work, time off to recover from childbirth, or break time and  
3 appropriate facilities for breast-feeding or expressing breast milk.  
4 Reasonable accommodation ~~does shall~~ not include accommodations which the  
5 covered entity can demonstrate require significant difficulty or expense  
6 thereby posing an undue hardship upon the covered entity. Factors to be  
7 considered in determining whether an accommodation would pose an undue  
8 hardship shall include:

9 (a) The nature and the cost of the accommodation needed under the  
10 Nebraska Fair Employment Practice Act;

11 (b) The overall financial resources of the facility or facilities  
12 involved in the provision of the reasonable accommodation, the number of  
13 persons employed at such facility, the effect on expenses and resources,  
14 or the impact otherwise of such accommodation upon the operation of the  
15 facility;

16 (c) The overall financial resources of the covered entity, the  
17 overall size of the business of a covered entity with respect to the  
18 number of its employees, and the number, type, and location of its  
19 facilities; and

20 (d) The type of operation or operations of the covered entity,  
21 including the composition, structure, and functions of the work force of  
22 such entity, and the geographic separateness and administrative or fiscal  
23 relationship of the facility or facilities in question to the covered  
24 entity;

25 ~~(14) (12)~~ Marital status means ~~shall mean~~ the status of a person  
26 whether married or single;

27 ~~(15) (13)~~ Because of sex or on the basis of sex includes ~~shall~~  
28 ~~include~~, but is not be limited to, because of or on the basis of  
29 pregnancy, childbirth, or related medical conditions;

30 ~~(16)(a) (14)~~ Harass because of sex includes ~~shall include~~ making  
31 unwelcome sexual advances, requesting sexual favors, and engaging in

1 other verbal or physical conduct of a sexual nature if (i) ~~(a)~~ submission  
2 to such conduct is made either explicitly or implicitly a term or  
3 condition of an individual's employment, (ii) ~~(b)~~ submission to or  
4 rejection of such conduct by an individual is used as the basis for  
5 employment decisions affecting such individual, or (iii) ~~(c)~~ such conduct  
6 has the purpose or effect of unreasonably interfering with an  
7 individual's work performance or creating an intimidating, hostile, or  
8 offensive working environment;

9 (b) Harass, when used in relation to race, color, religion,  
10 disability, marital status, or national origin, means conduct which has  
11 the purpose or effect of unreasonably interfering with an employee's work  
12 performance or creating an intimidating, hostile, or offensive working  
13 environment;

14 (17) (15) Unlawful under federal law or the laws of this state means  
15 ~~shall mean~~ acting contrary to or in defiance of the law or disobeying or  
16 disregarding the law;

17 (18) (16) Drug means shall mean a controlled substance as defined in  
18 section 28-401;

19 (19) (17) Illegal use of drugs means shall mean the use of drugs,  
20 the possession or distribution of which is unlawful under the Uniform  
21 Controlled Substances Act, but does shall not include the use of a drug  
22 taken under supervision by a licensed health care professional or any  
23 other use authorized by the Uniform Controlled Substances Act or other  
24 provisions of state law;

25 (20) (18) Individual who is pregnant, who has given birth, or who  
26 has a related medical condition means shall mean an individual with a  
27 known limitation who, with or without reasonable accommodation, can  
28 perform the essential functions of the employment position that such  
29 individual holds, desires, or may be temporarily assigned to.  
30 Consideration shall be given to the employer's judgment as to what  
31 functions of a job are essential, and if an employer has prepared a

1 written description before advertising or interviewing applicants for the  
2 job, this description shall be considered evidence of the essential  
3 functions of the job;

4 (21) ~~(19)~~ Race is inclusive of characteristics such as skin color,  
5 hair texture, and protective hairstyles; and

6 (22) ~~(20)~~ Protective hairstyles includes braids, locks, and twists.

7 Sec. 2. Section 48-1104, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 48-1104 (1) It shall be an unlawful employment practice for a Class  
10 I ~~an~~ employer:

11 (a) ~~(1)~~ To fail or refuse to hire, to discharge, or to harass any  
12 individual, or otherwise to discriminate against any individual with  
13 respect to compensation, terms, conditions, or privileges of employment,  
14 because of such individual's race, color, religion, sex, disability,  
15 marital status, or national origin; or

16 (b) ~~(2)~~ To limit, advertise, solicit, segregate, or classify  
17 employees in any way which would deprive or tend to deprive any  
18 individual of employment opportunities or otherwise adversely affect such  
19 individual's status as an employee, because of such individual's race,  
20 color, religion, sex, disability, marital status, or national origin.

21 (2) It shall be an unlawful employment practice for a Class II  
22 employer to harass any employee because of such employee's race, color,  
23 religion, sex, disability, marital status, or national origin.

24 Sec. 3. Section 48-1107, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 48-1107 It shall be an unlawful employment practice for any Class I  
27 employer, labor organization, or joint labor-management committee  
28 controlling apprenticeship or other training or retraining, including on-  
29 the-job training programs to discriminate against any individual because  
30 of race, color, religion, sex, disability, marital status, or national  
31 origin in admission to, or employment in, any program established to

1 provide apprenticeship or other training.

2 Sec. 4. Section 48-1107.01, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 48-1107.01 It shall be an unlawful employment practice for a covered  
5 entity to:

6 (1) Discriminate against a qualified individual with a disability  
7 because of the disability of such individual in regard to job application  
8 procedures, the hiring, advancement, or discharge of employees, employee  
9 compensation, job training, and other terms, conditions, and privileges  
10 of employment; ~~or~~

11 (2) Discriminate against an individual who is pregnant, who has  
12 given birth, or who has a related medical condition in regard to job  
13 application procedures, the hiring, advancement, or discharge of  
14 employees, employee compensation, job training, and other terms,  
15 conditions, and privileges of employment; or ~~-~~

16 (3) Discriminate against an individual, because of the known  
17 disability of an individual with whom the individual is known to have a  
18 relationship or association, in regard to job application procedures, the  
19 hiring, advancement, or discharge of employees, employee compensation,  
20 job training, and other terms, conditions, and privileges of employment.

21 Sec. 5. Section 48-1108.01, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 48-1108.01 It shall not be an unlawful employment practice for a  
24 covered entity or a Class II employer to:

25 (1) Prohibit the illegal use of drugs and the use of alcohol at the  
26 workplace by all employees;

27 (2) Require that employees not be under the influence of alcohol or  
28 be engaging in the illegal use of drugs at the workplace;

29 (3) Require employees to comply with any federal regulations  
30 concerning the use of alcohol or the illegal use of drugs which are  
31 applicable to the position of the employee or to the industry involved;



1 or

2 (4) Hold an employee who engages in the illegal use of drugs or who  
3 is an alcoholic to the same qualification standards for employment or job  
4 performance and behavior that such entity holds other employees even if  
5 any unsatisfactory performance or behavior is related to the drug use or  
6 alcoholism of such employee.

7 Sec. 6. Section 48-1114, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 48-1114 (1) It shall be an unlawful employment practice for an  
10 employer to discriminate against any of his or her employees or  
11 applicants for employment, for an employment agency to discriminate  
12 against any individual, or for a labor organization to discriminate  
13 against any member thereof or applicant for membership, because he or she  
14 has:

15 (a) Opposed ~~has opposed~~ any practice made an unlawful employment  
16 practice by the Nebraska Fair Employment Practice Act; or ~~or~~

17 (b) Made ~~has made~~ a charge, testified, assisted, or participated in  
18 any manner in an investigation, proceeding, or hearing under the act. ~~or~~

19 (2) It shall be an unlawful employment practice for a Class I  
20 employer to discriminate against any of his or her employees or  
21 applicants for employment, for an employment agency to discriminate  
22 against any individual, or for a labor organization to discriminate  
23 against any member thereof or applicant for membership, because he or she  
24 ~~(c)~~ has opposed any practice or refused to carry out any action unlawful  
25 under federal law or the laws of this state.

26 (3)(a) It shall be an unlawful employment practice for a Class I  
27 employer to discriminate against any of his or her employees or  
28 applicants for employment, for an employment agency to discriminate  
29 against any individual, or for a labor organization to discriminate  
30 against any member thereof or applicant for membership, because he or  
31 she ~~, or (d)~~ has inquired about, discussed, or disclosed information

1 regarding employee wages, benefits, or other compensation.

2 (b) This subsection ~~subdivision~~ (d) shall not apply to instances in  
3 which an employee who has authorized access to the information regarding  
4 wages, benefits, or other compensation of other employees as a part of  
5 such employee's job functions discloses such information to a person who  
6 does not otherwise have authorized access to such information, unless  
7 such disclosure is in response to a charge or complaint or in furtherance  
8 of an investigation, proceeding, hearing, or other action, including an  
9 investigation conducted by the employer.

10 (c) ~~(2)~~ Nothing in this subsection or ~~subdivision~~ ~~(1)(d)~~ of this  
11 ~~section~~ shall be contrary to applicable state or federal law or:

12 (i) ~~(a)~~ Create an obligation for any employer or employee to  
13 disclose information regarding employee wages, benefits, or other  
14 compensation;

15 (ii) ~~(b)~~ Permit an employee, without the written consent of the  
16 employer, to disclose proprietary information, trade secret information,  
17 or information that is otherwise subject to a legal privilege or  
18 protected by law. For purposes of this subdivision, proprietary  
19 information does not include information regarding employee wages,  
20 benefits, or other compensation;

21 (iii) ~~(c)~~ Permit an employee to disclose information regarding  
22 wages, benefits, or other compensation of other employees to a competitor  
23 of the employer;

24 (iv) ~~(d)~~ Apply to a Class II employer or an employer ~~employers~~ which  
25 is ~~are~~ exempt from the Nebraska Fair Employment Practice Act under  
26 section 48-1102;

27 (v) ~~(e)~~ Permit an employee to discuss information regarding employee  
28 wages, benefits, or other compensation during working hours, as defined  
29 in existing workplace policies, or in violation of specific contractual  
30 obligations; or

31 (vi) ~~(f)~~ Permit an employee to disseminate information regarding

1 employee wages, benefits, or other compensation to the general public.  
2 For purposes of this subdivision, general public does not include public  
3 officials, judicial officers, legislators, trade associations, or other  
4 reasonable third parties for the employee's mutual aid or protection.

5 ~~(4) (3)~~ The changes made to this section by Laws 2019, LB217, shall  
6 not be construed so as to impair or affect the obligation of any lawful  
7 contract in existence prior to September 1, 2019.

8 Sec. 7. Section 48-1121, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 48-1121 Every Class I employer, employment agency, and labor  
11 organization subject to the Nebraska Fair Employment Practice Act shall  
12 post in a conspicuous place or places on his, her, or its premises a  
13 notice to be prepared or approved by the commission which shall set forth  
14 excerpts of the act and such other relevant information which the  
15 commission deems necessary to explain the act.

16 Sec. 8. Original sections 48-1102, 48-1104, 48-1107, 48-1107.01,  
17 48-1108.01, 48-1114, and 48-1121, Reissue Revised Statutes of Nebraska,  
18 are repealed.